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### Matter of Estate of Birch Clerk's Record Dckt. 45451

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

IN THE MATTER OF THE ESTATE OF:,  
RUTH BIRCH, DECEASED.

Case No. CV-2011-7613

LINDA BAILEY, Personal Representative,  
  
Petitioner- Respondent,

Docket No. 45451

v.

BRUCE H. BIRCH,

Real Party in Interest – Appellant.

\*\*\*\*\*

**CLERK'S RECORD ON APPEAL**

\*\*\*\*\*

Appeal from the District Court of the  
Seventh Judicial District of the State of Idaho,  
in and for the County of Bonneville

HONORABLE BRUCE L. PICKETT, District Judge.

\*\*\*\*\*

Michael D. Moscrip  
PO Box 157  
Payette, ID 83661  
*Attorney for Appellant*

B.J. Driscott  
PO Box 50731  
Idaho Falls, ID 83405  
*Attorney for Respondent*

## In The Matter Of The Estate Of Ruth Birch Deceased

Date	Code	User	Judge
12/14/2011	NCIE	SBARRERA	New Case Filed-Informal Estate L. Mark Riddoch
	NOAP	SBARRERA	Other party: Bailey, Linda Notice Of Appearance B.J. Driscoll L. Mark Riddoch
		SBARRERA	Filing: A6 - Application for informal probate Paid by: Driscoll, B.J. (attorney for Bailey, Linda) Receipt number: 0057065 Dated: 12/15/2011 Amount: \$88.00 (Check) For: Bailey, Linda (other party) L. Mark Riddoch
	APPL	SBARRERA	Verified Application For Informal Appointment Of Personal Representative L. Mark Riddoch
12/15/2011	WILL	NEWTON	Last Will And Testament Filed L. Mark Riddoch
12/16/2011	STIN	NEWTON	Statement,informal Probate L. Mark Riddoch
	LTSA	NEWTON	Letters Of Administration Filed L. Mark Riddoch
	CDIS	NEWTON	Civil Disposition entered for: Bailey, Linda, Other Party; Birch, Ruth, Subject. Filing date: 12/16/2011 L. Mark Riddoch
	STATUS	NEWTON	Case Status Changed: Closed L. Mark Riddoch
12/20/2011	HEIR	DOOLITTL	Information On Heirs And Devisees L. Mark Riddoch
2/10/2012		CEARLY	Miscellaneous Payment: For Comparing And Conforming A Prepared Record, Per Page Paid by: Smith Driscoll & Associates Receipt number: 0006859 Dated: 2/10/2012 Amount: \$1.00 (Check) L. Mark Riddoch
		CEARLY	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Smith Driscoll & Associates Receipt number: 0006859 Dated: 2/10/2012 Amount: \$1.00 (Check) L. Mark Riddoch
3/13/2012	PPUB	SBARRERA	Proof Of Publication (February 22, 17, March 7, 2012) L. Mark Riddoch
6/12/2012	NOTC	SBARRERA	Notice Of Disallowance Of Claim L. Mark Riddoch
9/5/2012	MOTN	DOOLITTL	Motion for Approval of Compromise Agreement L. Mark Riddoch
9/10/2012	ORDR	NEWTON	Order Approving Compromise Agreement L. Mark Riddoch
10/23/2012	MOTN	BOULWARE	Motion (Barry Birch) L. Mark Riddoch
10/29/2012	INVT	HUMPHREY	Inventory L. Mark Riddoch
3/18/2013		SOLIS	Demand For Bond L. Mark Riddoch
4/1/2013	HRSC	STOKES	Hearing Scheduled (Motion 04/17/2013 04:00 PM) Motion To Remove PR, Demand For Bond L. Mark Riddoch
	STATUS	STOKES	Case Status Changed: Closed pending clerk action L. Mark Riddoch
		STOKES	Notice of Hearing L. Mark Riddoch
4/10/2013	AFFD	DOOLITTL	Affidavit of Linda Jo Bailey L. Mark Riddoch

## In The Matter Of The Estate Of Ruth Birch Deceased

Date	Code	User	Judge
4/10/2013	BRIF	DOOLITTL	Brief Filed in Opposition to Petition for Removal Of Personal Representative and Demand for Bond
4/11/2013	NOTH	STOKES	Amended Notice Of Hearing (Updated Certificate of Service) 4/17/2013 @ 4:00PM
4/16/2013	MOTN	STOKES	Motion For Previously Filed Demand For Bond
4/17/2013	MINE	STOKES	Minute Entry Hearing type: Motion Hearing date: 4/17/2013 Time: 4:01 pm Courtroom: Court reporter: Minutes Clerk: Suzie Stokes Tape Number: Party: Linda Bailey, Attorney: B.J. Driscoll Party: Ruth Birch
	NOAP	SOLIS	Other party: Birch, Bruce H Notice Of Appearance Bruce H. Birch
	AFFD	SOLIS	Affidavit
		SOLIS	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Birch, Bruce H. (attorney for Birch, Bruce H) Receipt number: 0018613 Dated: 4/17/2013 Amount: \$66.00 (Credit card) For: Birch, Bruce H (other party)
		SOLIS	Filing: Technology Cost - CC Paid by: Birch, Bruce H. (attorney for Birch, Bruce H) Receipt number: 0018613 Dated: 4/17/2013 Amount: \$3.00 (Credit card) For: Birch, Bruce H (other party)
4/18/2013	HRHD	STOKES	Hearing result for Motion scheduled on 04/17/2013 04:00 PM: Hearing Held Motion To Remove PR, Demand For Bond
4/23/2013	ORDR	STOKES	Order Denying Motions For Removal Of Personal Representative And For A Bond
6/3/2013	MOTN	SOLIS	Ex Parte Motion To Correct Court's Agricultural Characterization Of Realty
	BRIF	CARTER	Brief In Opposition To Ex Parte Motion To Correct Courts Agricultural Characterization Of Realty
6/24/2014	INVT	CEARLY	Amended Inventory
		CEARLY	Interim Accounting
		CEARLY	Filing: J1d - Probate, intermediate or final accounting of personal rep Paid by: Driscoll Law Receipt number: 0029497 Dated: 6/26/2014 Amount: \$9.00 (Check) For: Bailey, Linda (other party)

In The Matter Of The Estate Of Ruth Birch Deceased

Date	Code	User	Judge
8/18/2015	HRSC	ANDERSEN	Hearing Scheduled (Hearing 09/14/2015 04:00 PM) Bruce Birch's Motion to Inspect State's Records
8/24/2015	NOTH	JNICHOLS	Notice Of Hearing RE: Motion For Order To Allow Inspection Of Estate Records 09/14/2015
	MOTN	JNICHOLS	Motion To Appear Telephonically
	MOTN	JNICHOLS	Motion For Order To Allow Inspection Of Estate Records
8/26/2015	NOAP	CEARLY	Other party: Birch, Bruce H Notice Of Appearance John M. Ohman
9/14/2015	ORDR	STOKES	Order On Motion To Appear Telephonically
	MINE	STOKES	Minute Entry Hearing type: Hearing Hearing date: 9/14/2015 Time: 3:08 pm Courtroom: Court reporter: Minutes Clerk: Suzie Stokes Tape Number: Party: Bruce Birch, Attorney: John Ohman Party: Linda Bailey, Attorney: B.J. Driscoll Party: Ruth Birch
	HRHD	STOKES	Hearing result for Hearing scheduled on 09/14/2015 04:00 PM: Hearing Held Bruce Birch's Motion to Inspect State's Records
9/24/2015		BHOPE	Demand For Bond
9/25/2015	ORDR	KBAIRD	Order denying motion for order to allow inspection of estate records
9/28/2015	HRSC	STOKES	Hearing Scheduled (Motion 10/14/2015 04:00 PM) Motion To Excuse Bond
9/30/2015	MOTN	BHOPE	Objection And Motion To Excuse Bond
	AFFD	BHOPE	Affidavit Of Linda Jo Bailey
10/13/2015	HRVC	STOKES	Hearing result for Motion scheduled on 10/14/2015 04:00 PM: Hearing Vacated Motion To Excuse Bond
	STIP	BHOPE	Stipulation To Withdraw Demand For Bond
10/14/2015	NOTC	JNICHOLS	Notice Vacating Hearing 10/14/2015 At 4:00PM
10/22/2015	ORDR	CEARLY	Order
12/18/2015	WDAT	CCLEMENTS	Withdrawal Of Attorney - John Michael Ohman
3/3/2016	HRSC	STOKES	Hearing Scheduled (Motion 03/10/2016 01:30 PM) Motion To Approve Sale Of Property
	CONT	STOKES	Hearing result for Motion scheduled on 03/10/2016 01:30 PM: Continued Motion To Approve Sale Of Property
	HRSC	STOKES	Hearing Scheduled (Motion 03/18/2016 01:30 PM) Motion To Approve Sale Of Property

## In The Matter Of The Estate Of Ruth Birch Deceased

Date	Code	User	Judge
3/4/2016	MOTN	HUMPHREY	Motion For Approval Of Sale Of Estate Property L. Mark Riddoch
	NOTH	HUMPHREY	Notice Of Hearing - 03/18/2016 @ 1:30PM RE: Motion For Approval Of Sale Of Estate Property L. Mark Riddoch
3/7/2016	MOTN	TCORONA	Motion To Prohibit Sale Of Real Property Or, In The Alternative, Petition To Partition L. Mark Riddoch
	NOTH	TCORONA	Notice Of Hearing 03/18/16 @1:30PM Motion To Prohibit Sale Of Real Property Or, In The Alternative, Petition To Partition L. Mark Riddoch
3/8/2016	MOTN	TCORONA	Motion To Shorten Time L. Mark Riddoch
	AFFD	TCORONA	Affidavit Of Bruce Birch L. Mark Riddoch
	NOTH	TCORONA	Notice Of Hearing 03/18/16 @1:30 PM Motion To Shorten Time L. Mark Riddoch
	ORDR	STOKES	Order To Shorten Time L. Mark Riddoch
3/9/2016	MOTN	TCORONA	Objection To Motion To Approve Sale Of Estate Real Property L. Mark Riddoch
3/18/2016	MINE	STOKES	Minute Entry Hearing type: Motion Hearing date: 3/18/2016 Time: 1:26 pm Courtroom: Court reporter: Minutes Clerk: Suzie Stokes Tape Number: Party: Bruce Birch Party: Linda Bailey, Attorney: B.J. Driscoll Party: Ruth Birch L. Mark Riddoch
3/22/2016	HRHD	STOKES	Hearing result for Motion scheduled on 03/18/2016 01:30 PM: Hearing Held Motion To Approve Sale Of Property L. Mark Riddoch
3/24/2016		BASINGER	Miscellaneous Payment: Copy Tape Fee Paid by: Driscoll Law Receipt number: 0012677 Dated: 3/24/2016 Amount: \$10.00 (Check) L. Mark Riddoch
4/7/2016	ORDR	CEARLY	Order L. Mark Riddoch
4/28/2016		BASINGER	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Thompson, Smith, Woolf,Anderson Receipt number: 0018134 Dated: 4/28/2016 Amount: \$16.00 (Check) L. Mark Riddoch
5/13/2016	HRSC	STOKES	Hearing Scheduled (Hearing 06/22/2016 03:00 PM) Final Petition to Approve and Close the Estate L. Mark Riddoch
5/17/2016		TCORONA	Filing: J1a - Probate, petition for distribution of estate Paid by: Driscoll, B.J. (attorney for Bailey, Linda) Receipt number: 0021172 Dated: 5/18/2016 Amount: \$25.00 (Check) For: Bailey, Linda (other party) L. Mark Riddoch

## In The Matter Of The Estate Of Ruth Birch Deceased

Date	Code	User	Judge
5/17/2016	PETN	TCORONA	Petition For Order Of Complete Settlement, To Determine Testacy, To Approve Final Accounting And Distribution, And To Discharge Personal Representative
	AFFD	TCORONA	Affidavit Of Linda Jo Bailey
	AFFD	TCORONA	Affidavit Of B.J. Driscoll
		TCORONA	Final Accounting
	NOTH	TCORONA	Notice Of Hearing 06/22/16 @3:00 PM Petition For Order Of Complete Settlement, To Determine Testacy, To Approve Final Accounting And Distribution, And To Discharge Personal Representative
5/26/2016		JNICHOLS	Amended Final Accounting
6/6/2016		JNICHOLS	Bruce H. Birch's Objection To Final Accounting
6/8/2016	MOTN	TCORONA	Motion To Allocate Fees
	NOTH	TCORONA	Notice Of Hearing 06/22/16 @3:00 PM Motion To Allocate Fees
6/16/2016	MEMO	BJENNINGS	Memorandum in Support of Objections to Amended Final Accounting
	AFFD	BJENNINGS	Affidavit of Bruce H. Birch
		BJENNINGS	Objection to Amended Final Accounting, Proposed Distribution of Assets and Discharge of Personal Representative
6/17/2016	CONT	STOKES	Hearing result for Hearing scheduled on 06/22/2016 03:00 PM: Continued Final Petition to Approve and Close the Estate
	HRSC	STOKES	Hearing Scheduled (Hearing 06/30/2016 09:30 AM) Final Petition to Approve and Close the Estate
6/23/2016	BRIF	TCORONA	Brief In Opposition To Objection To Amended Final Accounting And Motion To Allocate Fees Filed
	AFFD	TCORONA	Affidavit Of B. J. Driscoll
	AFFD	TCORONA	Affidavit Of Linda Jo Bailey
	MEMO	TCORONA	Supplemental Memorandum
6/27/2016	MOTN	CPETERSON	Linda Jo Bailey's Motion to Strike
	MOTN	CPETERSON	Linda Jo Bailey's Motion to Shorten Time
	NOTH	CPETERSON	Notice Of Hearing 06/30/2016 @ 9:30 AM RE: Motion to Strike and Motion to Shorten Time
6/28/2016		BJENNINGS	Objection to Motion to Strike and to Motion to Shorten Time
6/29/2016	ORDR	STOKES	Order Shortening Time

In The Matter Of The Estate Of Ruth Birch Deceased

Date	Code	User	Judge
6/30/2016	MINE	STOKES	Minute Entry Hearing type: Hearing Hearing date: 6/30/2016 Time: 9:33 am Courtroom: To Be Assigned Court reporter: Minutes Clerk: Suzie Stokes Tape Number: Party: Bruce Birch, Attorney: Bruce Birch Party: Linda Bailey, Attorney: B.J. Driscoll
	HRHD	STOKES	L. Mark Riddoch Hearing result for Hearing scheduled on 06/30/2016 09:30 AM: Hearing Held Final Petition to Approve and Close the Estate
7/13/2016		TCORONA	L. Mark Riddoch Supplemental Authority
8/18/2016	ORDR	STOKES	L. Mark Riddoch Order Granting In Substantial Part The Personal Representative's Petition For Orders Filed 5/17/2016
	STATUS	STOKES	L. Mark Riddoch Case Status Changed: closed
8/26/2016	MOTN	TCORONA	L. Mark Riddoch Bruce Birch's Motion To Reconsider
8/29/2016	MEMO	CPETERSON	L. Mark Riddoch Memorandum in Support of Motion to Reconsider
9/1/2016	MEMO	TCORONA	L. Mark Riddoch Memorandum Of Attorney's Fees And Costs
	AFFD	TCORONA	L. Mark Riddoch Affidavit Of B.J. Driscoll
9/9/2016	MEMO	CPETERSON	L. Mark Riddoch Supplemental Memorandum
9/13/2016	BRIF	JNICHOLS	L. Mark Riddoch Brief In Opposition To Motion To Reconsider
9/19/2016	MEMO	JNICHOLS	L. Mark Riddoch Reply Memo
10/7/2016	ORDR	STOKES	L. Mark Riddoch Order Denying Motion For Reconsideration
10/20/2016	ORDR	STOKES	L. Mark Riddoch Estate Closing Order And Decree Of Distribution
	CDIS	STOKES	L. Mark Riddoch Civil Disposition entered for: Bailey, Linda, Other Party; Birch, Bruce H, Other Party; Birch, Ruth, Subject. Filing date: 10/20/2016
11/2/2016	MOTN	BJENNINGS	L. Mark Riddoch Motion to Reconsider or, Alternatively Motion to Set Aside Pursuant to Rule 60(b), IRCP
11/9/2016	MOTN	JNICHOLS	L. Mark Riddoch Amended Motion To Reconsider Or Alternatively, Motion To Set Aside Pursuant To Rule Rule 60(b), IRCP
	MEMO	JNICHOLS	L. Mark Riddoch Memorandum In Support Of Amended Motion To Reconsider, Or, Alternatively, Motion To Set Aside Pursuant To Rule 60(B)
11/28/2016	MOTN	JNICHOLS	L. Mark Riddoch Motion To Disqualify For Cause Oral Argument Requested
	AFFD	JNICHOLS	L. Mark Riddoch Affidavit In Support Of Motion To Disqualify For Cause, Rule 40(b)(1)(D), IRCP
11/29/2016	MOTN	TCORONA	L. Mark Riddoch Second Amended Motion To Reconsider Oral Argument Requested (Fax)



## In The Matter Of The Estate Of Ruth Birch Deceased

Date	Code	User	Judge
11/29/2016	ORDR	STOKES	Order Denying Amended Motion For Reconsideration And/OR To Set Aside & Order Order Denying Motion To Disqualify
12/29/2016	ORDR	KER	Order Denying Second Motion for Reconsideration and/or to Set Aside
12/30/2016	NOTC	JNICHOLS	Notice Of Appeal (Magistrate To District)
1/3/2017		JNICHOLS	Filing: L2 - Appeal, Magistrate Division to District Court Paid by: Bruch H. Birch Law Office, PLLC Receipt number: 0002516 Dated: 1/3/2017 Amount: \$81.00 (Check) For: Bailey, Linda (other party) and Birch, Bruce H (other party)
	JUDGE	JNICHOLS	Judge Change
		JNICHOLS	Notice of Assigned Judge and Case Number
1/13/2017	MOTN	TCORONA	Motion For Entry Of Judgment
1/18/2017		CPETERSON	Objection to Entry of Judgment
1/20/2017	JDMT	KER	Judgment \$4310.98 Linda Bailey to recover from Bruce Birch
	CDIS	KER	Civil Disposition entered for: Bailey, Linda, Other Party; Birch, Bruce H, Other Party. Filing date: 1/20/2017
1/27/2017	NOTC	JNICHOLS	Amended Notice Of Appeal
2/7/2017	TRAN	ABARNES	Transcript Filed - June 30, 2016
	NOTC	ABARNES	Notice of Lodging of Transcript
2/8/2017	ABST	TCORONA	Abstract Judgment Issued
	AFFD	TCORONA	Affidavit In Support Of Writ OF Execution
	WRIT	TCORONA	Writ Of Execution Issued \$4325.04 Payette County
		TCORONA	Miscellaneous Payment: Writs Of Execution Paid by: driscoll Receipt number: 0008098 Dated: 2/8/2017 Amount: \$2.00 (Check)
2/24/2017	STJD	TCORONA	Satisfaction Of Judgment
3/1/2017	HRSC	ABARNES	Hearing Scheduled (Hearing 06/01/2017 10:00 AM) Oral Argument
	STATUS	ABARNES	Case Status Changed: Closed pending clerk action
	NOTC	ABARNES	Notice of Settling Transcript on Appeal and Notice of Time for Hearing Oral Argument
3/3/2017	MOTN	JNICHOLS	Motion To Disqualify For Cause Oral Argument Requested Affidavit Filed
	AFFD	JNICHOLS	Affidavit In Support OF Motion To Disqualify For Cause
3/17/2017		BJENNINGS	Objection to Bruce H. Birch's Motion to Disqualify for Cause

## In The Matter Of The Estate Of Ruth Birch Deceased

Date	Code	User		Judge
3/23/2017	ORDR	KER	Order Denying 2nd Motion to Disqualify	Bruce L Pickett
	ORDR	KER	Supplemental Order Regarding Attorney's Fees	Bruce L Pickett
3/31/2017	MOTN	BJENNINGS	Motion to Strike, Or, Alternative Motion to Amend Notice of Appeal	Bruce L Pickett
	BRIF	BJENNINGS	Appellate Brief	Bruce L Pickett
4/4/2017	HRSC	AJENKINS	Hearing Scheduled (Motion 05/04/2017 08:30 AM) Motion to amend appeal	Bruce L Pickett
4/10/2017	MOTN	TCORONA	Bruce H. Birch's Ex Parte Motion For Order To Appear Telephonically	Bruce L Pickett
	NOTH	TCORONA	Notice Of Hearing 05/04/17 @8:30 AM Motion To Strike Or Alternative Motion To Amend Notice Of Appeal	Bruce L Pickett
4/24/2017	ORDR	AJENKINS	Order Denying Motion to Appear Telephonically	Bruce L Pickett
4/27/2017	BRIF	ALINARES	Brief In Opposition To Motion To Strike, Or, Alternative Motion To Amend Notice of Appeal	Bruce L Pickett
4/28/2017	BRIF	TCORONA	Respondent's Brief On Appeal Filed	Bruce L Pickett
5/3/2017		ALINARES	Reply To Objection	Bruce L Pickett
5/4/2017	MINE	AJENKINS	Minute Entry Hearing type: Motion Hearing date: 5/4/2017 Time: 8:31 am Courtroom: Court reporter: Mary Fox Minutes Clerk: Andrea Jenkins Tape Number: 4	Bruce L Pickett
	DCHH	AJENKINS	Hearing result for Motion scheduled on 05/04/2017 08:30 AM: District Court Hearing Held Court Reporter: Mary Ann Elliott Number of Transcript Pages for this hearing estimated: Motion to Strike, Or, Alternative Motion to Amend Notice of Appeal- Birch to send notice Under 50	Bruce L Pickett
	NOTC	CPETERSON	Amended Notice of Appeal	Bruce L Pickett
5/12/2017	BRIF	CPETERSON	Apellant's Reply Brief	Bruce L Pickett
6/1/2017	MINE	AJENKINS	Minute Entry Hearing type: Hearing Hearing date: 6/1/2017 Time: 10:05 am Courtroom: Court reporter: Mary Fox Minutes Clerk: Andrea Jenkins Tape Number: 4	Bruce L Pickett

In The Matter Of The Estate Of Ruth Birch Deceased

Date	Code	User	Judge
6/1/2017	MINE	AJENKINS	Minute Entry Hearing type: Hearing Hearing date: 6/1/2017 Time: 10:47 am Courtroom: Court reporter: Mary Fox Minutes Clerk: Andrea Jenkins Tape Number:
6/6/2017	DCHH	AJENKINS	Hearing result for Hearing scheduled on 06/01/2017 10:00 AM: District Court Hearing Held Court Reporter: Mary Fox Number of Transcript Pages for this hearing estimated: Oral Argument Under 50
7/5/2017	ORDR	ABARNES	Opinion and Order on Appeal
8/14/2017		ALINARES	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Birch, Bruce H (other party) Receipt number: 0036932 Dated: 8/14/2017 Amount: \$129.00 (Cash) For: Birch, Bruce H (other party)
	BNDC	ALINARES	Bond Posted - Cash (Receipt 36934 Dated 8/14/2017 for 100.00)
	BNDC	ALINARES	Bond Posted - Cash (Receipt 36935 Dated 8/14/2017 for 200.00) - Voided
	NOTC	ALINARES	Notice of Appeal
	APSC	ALINARES	Appealed To The Supreme Court
9/26/2017	CERTAP	ABIRCH	Clerk's Certificate of Appeal
12/29/2017	BNDC	HORNE	Bond Posted - Cash (Receipt 56871 Dated 12/29/2017 for 143.00) for Court Reporter
	BNDC	HORNE	Bond Posted - Cash (Receipt 56872 Dated 12/29/2017 for 57.00)
	BNDE	HORNE	Cash Bond Exonerated (Amount 143.00)
1/3/2018	BNDC	TCORONA	Bond Posted - Cash (Receipt 463 Dated 1/3/2018 for 104.65)

B. J. Driscoll, Esq. – ISBN 7010  
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P.O. Box 50731  
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BONNEVILLE COUNTY  
IDAHO  
16 OCT 20 PM 3:29

Attorneys for the Estate and Its Personal Representative

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF BONNEVILLE

MAGISTRATE DIVISION

In the Matter of the Estate of

RUTH BIRCH,

Deceased.

Case No. CV-2011-7613

**ESTATE CLOSING ORDER AND DECREE OF  
DISTRIBUTION**

Upon consideration of the Petition For Order Of Complete Settlement, To Determine Testacy, To Approve Final Accounting And Distribution, And To Discharge Personal Representative and supporting affidavits and documents filed by Linda J. Bailey on May 17, 2016, and on the proceedings, filings, and orders subsequent thereto, the Court determines and finds that:

1. Petitioner has fully administered the estate of the decedent by collecting and managing the assets of the estate, preparing an inventory of property owned by the decedent at the date of death of the decedent, making payment, settlement, or other disposition of all lawful claims against the estate, and performing all other acts required of the petitioner by the laws of the State of Idaho pertaining to estates of decedents.

**ESTATE CLOSING ORDER- PAGE 1**

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Order  
Closing  
Estate

2. The final accounting is complete and accurate.
3. The decedent died testate. The Court has previously informally probated the will of the decedent.
4. No Idaho Estate Tax is due and owing.
5. Included her Amended Final Accounting, the Petitioner reported all prior distributions made. Petitioner has also submitted herewith a Schedule of Distribution for final distributions to be made, a copy of which is attached hereto and incorporated herewith. After making final settlement and distribution according to the Schedule of Distribution, petitioner should be discharged as personal representative and the administration of this estate should be closed.
6. All of the allegations and statements in the petition are true.
7. All required notices have been given or waived.
8. The estate has been administered according to the laws of this State and the orders of this Court and should be closed.

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED THAT:

1. The will of the decedent heretofore informally probated by the Court is hereby formally probated in accordance with the will, the Order Approving Compromise Agreement filed September 10, 2012, and subsequent proceedings and orders herein.
2. The final account of petitioner has been approved.
3. Petitioner is hereby authorized and directed to deliver and distribute title and possession of the assets of the estate to the distributees in the amount and the manner set forth in the annexed Schedule of Distribution, and all prior distributions shown in the Amended

**ESTATE CLOSING ORDER- PAGE 2**

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Final Accounting are hereby approved. Upon making such delivery and distribution, petitioner shall be fully and finally released and discharged from petitioner's office and trust as personal representative and shall be released and discharged from any and all liability arising in connection with the performance of petitioner's duties as personal representative and from further claim or demand of any interested person, and the administration of this estate shall be closed.

DATED this 20 day of October, 2016.

A handwritten signature in black ink, appearing to read "L. Mark Riddoch", written over a horizontal line.

L. Mark Riddoch  
MAGISTRATE JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20 day of October, 2016, I served a true and correct copy of the within and foregoing document on the following persons in the manner set forth:

B. J. Driscoll, Esq.  
Smith, Driscoll & Associates, PLLC  
P. O. Box 50731  
Idaho Falls, ID 83405-0731  
Fax: (208) 529-4166  
Email: bjd@eidaholaw.com

☐ Hand ☐ Mail ☐ Fax ☐ Email

☒ Courthouse box

Bruce H. Birch  
P.O. Box 157  
Payette, ID 83661  
Fax: (208) 642-9072  
Email: birchlwoffices@qwestoffice.net

☐ Hand ☒ Mail ☐ Fax ☐ Email

Cheryl Simmons  
6203 Founders Point Drive  
Idaho Falls, ID 83406  
Email: cherylinif@yahoo.com

☐ Hand ☒ Mail ☐ Fax ☐ Email

*Penny Manning*  
*Susan Stokes*

\_\_\_\_\_  
Clerk of the Court

# EXHIBIT "A" TO ESTATE CLOSING ORDER

## SCHEDULE OF FINAL DISTRIBUTIONS

<b>Proposed Final Distribution Of Remaining Estate Assets</b>	<b>Cash On Hand: \$28,424.04</b>	<b>Estate Realty: \$720,000.00</b>
Compensation to PR	<\$5,059.89>	---
Attorney's Fees Previously Paid By Estate But Disallowed By Court's August 18, 2016 Order	\$4,000.00	---
Attorney's Fees and Costs from April 26, 2016 to October 7, 2016*	<\$11,559.05>	---
Bruce Birch	\$8,621.96**	<\$540,000.00> (75%)*
Cheryl Simmons	<\$12,213.53>***	<\$180,000.00> (25%)*
Linda Bailey	<\$12,213.53>***	\$0.00
<b>Balance</b>	<b>\$0.00</b>	<b>\$0.00</b>

\*To simplify the attorney's fees calculations, which change each time counsel spends additional time working on this file, and to promote final settlement, counsel for the Estate and its Personal Representative does not include any attorney's fees incurred in completing the proposed Estate Closing Order and Schedule of Final Distributions, which consist of several hours.

\*\*This amount requires a payment from Bruce Birch instead of a distribution from Bruce Birch to cover the \$10,521.00 in attorney's fees and \$144.85 in costs set forth in the Memorandum of Attorney's Fees and Costs filed September 1, 2016, to which there was no timely objection and motion to disallow filed, together with the \$10,314.50 of Estate attorney's fees assessed against Bruce Birch in the court's Order filed August 18, 2016. Thus, rather than receiving a distribution from the Estate, Bruce Birch would be required to pay one-half of the \$8,621.96 total, or \$4,310.98, each to Cheryl Simmons and Linda Bailey.

\*\*\*Cheryl Simmons and Linda Bailey would each receive \$7,902.55 from the Estate and the remaining \$4,310.98 from Bruce Birch.



1 Bruce H. Birch, *Pro Se*  
 2 1465 Third Avenue North  
 3 P.O. Box 157  
 4 Payette, ID 83661  
 5 Telephone (208) 642-9071  
 6 Facsimile (208) 642-9072

2016 DEC 30 AM 9:23

DISTRICT COURT  
 MAGISTRATE DIVISION  
 BONNEVILLE COUNTY  
 IDAHO

12 IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
 13 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

15 IN THE MATTER OF THE ESTATE OF: )  
 16 )  
 17 )  
 18 )  
 19 )

Case No. CV-2011-0007613-IE

17 RUTH BIRCH,

**NOTICE OF APPEAL**

18 Deceased.

19 \*\*\*\*\*

20 TO: The Linda Bailey, Personal Representative, and to her attorney of record, B. J.  
 21 Driscoll, P. O. Box 5073, Idaho Falls, Idaho 83405, and the Clerk of the above-  
 22 entitled Court, Penny Manning.

23 NOTICE IS HEREBY GIVEN:

24 I. That Bruce H. Birch, Appellant, an interested party in the  
 25 above-captioned action by virtue of the Order Approving Compromise Agreement entered  
 26

27 NOTICE OF APPEAL - I  
 28

Notice of  
 Appeal

1 herein and by virtue of having inherited the estate interest of Barry Lee Birch, appeals to  
2 the District Court of the Seventh Judicial District from the Court's ESTATE CLOSING  
3 ORDER AND DECREE OF DISTRIBUTION which was entered October 12, 2016 and the  
4 ORDER DENYING AMENDED MOTION FOR RECONSIDERATION AND/OR TO  
5 SET ASIDE & ORDER DENYING MOTION TO DISQUALIFY which was entered  
6 November 29, 2016 and the ORDER DENYING SECOND MOTION FOR  
7 RECONSIDERATION AND/OR ORDER TO SET ASIDE.

8 II. That the Appellant has a right to appeal to the District Court of the  
9 Seventh Judicial District the orders described in paragraph I. above as it are appealable  
10 orders under and pursuant to the Idaho Rules of Civil Procedure.

11 III. Preliminary statement of the issues which the Appellant intends to  
12 assert on appeal are as follows:

13 A. Judge Mark L. Riddoch erred as a matter of law in denying the  
14 Amended Motion For Reconsideration in that the Court had no authority to rule on that  
15 motion while a Motion To Disqualify was pending before the Court. Judge Riddoch ruled  
16 on the Amended Motion For Reconsideration before ruling on the Motion To Disqualify.

17 B. Judge Mark L. Riddoch erred as a matter of law in denying the  
18 Amended Motion For Reconsideration which was amended by the filing of a Second  
19 Amended Motion for Reconsideration the morning of November 29, 2016 before entry of  
20 the Order from which appeal is made.

21 C. Judge Mark L. Riddoch erred as a matter of law in denying the  
22 Amended Motion For Reconsideration. His assertion that the Motion presented no factual  
23 or legal basis or authority for granting such a motion is false. Factually, the Court assessed  
24 an additional \$11,559.05 against Bruce Birch's distributive share of the estate for which no  
25 motion had been filed or order entered.

26 D. Judge Mark L. Riddoch erred as a matter of law and fact in executing  
27 the ORDER DENYING SECOND MOTION FOR RECONSIDERATION AND/OR TO

1 SET ASIDE as (1) no document by that title has been filed with the Court and (2) for the  
2 reasons set forth in Paragraphs A. through C. above.

3 E. Judge Mark L. Riddoch erred as a matter of law in ordering that legal  
4 fees in the approximate sum of \$10,300.00 be assessed against Bruce H. Birch and/or his  
5 distributive share of the assets of the Estate as (1) one-half of that sum was paid from Mr.  
6 Birch's one-half interest in the estate and an appropriate reimbursement, if owed, would be  
7 half of that amount, and (2) the Court has no authority to assess or award legal fees against  
8 an heir of the estate based upon the mere request of the Personal Representative.

9 F. Judge Mark L. Riddoch erred as a matter of law in assessing legal  
10 fees in the sum of approximately \$15,559.05 against Bruce H. Birch and/or his distributive  
11 share of the assets of the Estate as (1) the Court has no authority to assess legal fees against  
12 an heir of the estate based solely upon the request of the Personal Representative, (2) the  
13 Personal Representative did not file a motion for an award of fees in this amount, (3) the  
14 Court did not order payment of fees in this amount and (4) the assessment of these fees  
15 without notice of intent to do so and the holding of a hearing thereon violates due process.

16 G. Judge Mark L. Riddoch erred as a matter of law in discharging  
17 the Personal Representative after having acknowledged that the estate has potential  
18 liability arising from the Personal Representative's unauthorized sale of estate realty.

19 H. Judge Mark L. Riddoch erred by approving legal fees paid by the  
20 Estate to B.J. Driscoll to operate and/or manage the Estate realty as they were not  
21 necessary to the administration of the Estate and Mr. Driscoll had previously represented  
22 to the Court that he has no expertise in the management of agricultural properties.

23 I. Judge Mark L. Riddoch erred as a matter of law in assessing legal  
24 fees in the approximately amount of \$3,500.00 against Bruce H. Birch, fees which were  
25 generated in the negotiation of a compromise agreement which was approved by the Court,  
26 as no motion for an award of these fees was filed by the Personal Representative.

27 J. The Personal Representative refused to communicate directly with  
28

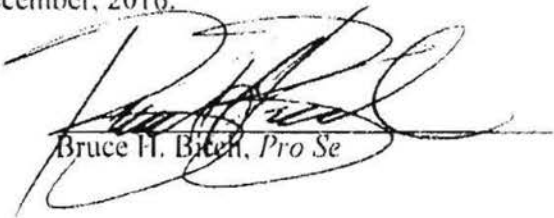
1 the heirs of the estate and required that all communications be directed to her attorney.  
2 The Court erred in approving the legal fees paid by Estate for this purpose as necessary to  
3 the administration of the estate,

4 K. The Appellant is entitled to an award of costs on appeal. If  
5 Appellant should retain counsel during the pendency of this appeal, he seeks an award of  
6 legal fees as well.

7 4. No order has been entered sealing all or any portion of the record.

8 5. A transcript of the hearing held before the Court on June 30, 2016  
9 has been or is being ordered.

10 DATED THIS 29 day of December, 2016.

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13 Bruce H. Bitch, Pro Se  
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CERTIFICATE OF SERVICE

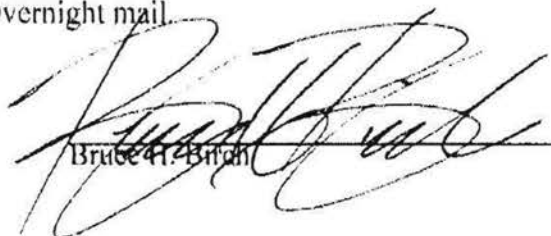
I hereby certify that on the 20 day of December, 2016, I served a true and correct copy of the within and foregoing document on the following persons in the manner set forth:

B. J. Driscoll  
Attorney at Law  
P. O. Box 50731  
Idaho Falls, Idaho 83405

☒ United States mail, first class postage prepaid  
☐ Facsimile transmission.  
☐ Email  
☐ Overnight mail.

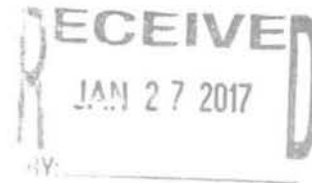
Cheryl Simmons  
6203 Founders Point Drive  
Idaho Falls, Idaho 83406

☒ United States mail, first class postage prepaid  
☐ Facsimile transmission.  
☐ Email  
☐ Overnight mail.

  
Bruce A. Britton

1/27/17

Bruce H. Birch, *Pro Se*  
1465 Third Avenue North  
P.O. Box 157  
Payette, ID 83661  
Telephone (208) 642-9071  
Facsimile (208) 642-9072



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

IN THE MATTER OF THE ESTATE OF: )

Case No. CV-2011-0007613-IE

RUTH BIRCH,

Deceased.

**AMENDED  
NOTICE OF APPEAL**

\*\*\*\*\*

TO: (1) Linda Bailey, Personal Representative, and to her attorney of record, B. J. Driscoll, P. O. Box 5073, Idaho Falls, Idaho 83405; and,  
(2) the Clerk of the above-entitled Court, Penny Manning; and.  
(3) Linda Bailey, individually and to her attorney of record, B. J. Driscoll, P. O. Box 5073, Idaho Falls, Idaho 83405.

NOTICE IS HEREBY GIVEN:

I. That Bruce H. Birch, Appellant, an interested party in the

AMENDED NOTICE OF APPEAL - I

1 above-captioned action by virtue of the Order Approving Compromise Agreement entered  
2 herein and by virtue of having inherited the estate interest of Barry Lee Birch, appeals to  
3 the District Court of the Seventh Judicial District from the Court's (1) ESTATE CLOSING  
4 ORDER AND DECREE OF DISTRIBUTION which was entered October 12, 2016 and (2)  
5 the ORDER DENYING AMENDED MOTION FOR RECONSIDERATION AND/OR TO  
6 SET ASIDE & ORDER DENYING MOTION TO DISQUALIFY which was entered  
7 November 29, 2016 and (3) the ORDER DENYING SECOND MOTION FOR  
8 RECONSIDERATION AND/OR ORDER TO SET ASIDE and (4) JUDGMENT entered  
9 January 20, 2017.

10 II. That the Appellant has a right to appeal to the District Court of the  
11 Seventh Judicial District the orders described in paragraph I. above as it are appealable  
12 orders under and pursuant to the Idaho Rules of Civil Procedure.

13 III. Preliminary statement of the issues which the Appellant intends to  
14 assert on appeal are as follows:

15 A. Judge Mark L. Riddoch erred as a matter of law in denying the  
16 Amended Motion For Reconsideration in that the Court had no authority to rule on that  
17 motion while a Motion To Disqualify was pending before the Court. Judge Riddoch ruled  
18 on the Amended Motion For Reconsideration before ruling on the Motion To Disqualify.

19 B. Judge Mark L. Riddoch erred as a matter of law in denying the  
20 Amended Motion For Reconsideration which was amended by the filing of a Second  
21 Amended Motion for Reconsideration the morning of November 29, 2016, prior to entry of  
22 the Order from which appeal is made.

23 C. Judge Mark L. Riddoch erred as a matter of law in denying the  
24 Amended Motion For Reconsideration. His assertion that the Motion presented no factual  
25 or legal basis or authority for granting such a motion is false. Factually, the Court assessed  
26 an additional \$11,559.05 against Bruce Birch's distributive share of the estate for which no  
27 motion had been filed or order entered.

1 D. Judge Mark L. Riddoch erred as a matter of law and fact in executing  
2 the ORDER DENYING SECOND MOTION FOR RECONSIDERATION AND/OR TO  
3 SET ASIDE as (1) no document by that title has been filed with the Court and (2) for the  
4 reasons set forth in Paragraphs A. through C. above.

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6 fees in the approximate sum of \$10,300.00 be assessed against Bruce H. Birch and/or his  
7 distributive share of the assets of the Estate as (1) one-half of that sum was paid from Mr.  
8 Birch's one-half interest in the estate and an appropriate reimbursement, if owed, would be  
9 half of that amount, and (2) the Court has no authority to assess or award legal fees against  
10 an heir of the estate based upon the mere request of the Personal Representative.

11 F. Judge Mark L. Riddoch erred as a matter of law in assessing legal  
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13 share of the assets of the Estate as (1) the Court has no authority to assess legal fees against  
14 an heir of the estate based solely upon the request of the Personal Representative, (2) the  
15 Personal Representative did not file a motion for an award of fees in this amount, (3) the  
16 Court did not order payment of fees in this amount and (4) the assessment of these fees  
without notice and an opportunity to object thereto is a violation of due process.

17 G. Judge Mark L. Riddoch erred as a matter of law in assessing legal  
18 fees in the approximately amount of \$3,500.00 against Bruce H. Birch, fees which were  
19 generated in the negotiation of a compromise agreement which was approved by the Court,  
20 as no motion for an award of these fees was filed by the Personal Representative.

21 H. Judge Mark Riddoch erred in entering a Judgment against Bruce H.  
22 Birch on January 20, 2017 for attorney fees in the amount of \$4,310.98 as (1) the Judgment  
23 entered without notice and opportunity to oppose the motion of Linda Bailey for entry of  
24 judgment, a denial of due process, and (2) the Judgment for attorney fees does not comply  
25 with the provisions of Rule 54, IRCP as there is no statutory or contractual basis for entry  
26 of a judgment in this amount.



1 I. The Appellant is entitled to an award of costs on appeal. If  
2 Appellant should retain counsel during the pendency of this appeal, he seeks an award of  
3 legal fees as well.

4 4. No order has been entered sealing all or any portion of the record.

5 5. A transcript of the hearing held before the Court on June 30, 2016  
6 has been ordered.

7 DATED THIS 27 day of January, 2017.

8  
9   
10 Bruce H. Birch, Pro Se  
11  
12  
13  
14

15 **CERTIFICATE OF SERVICE**

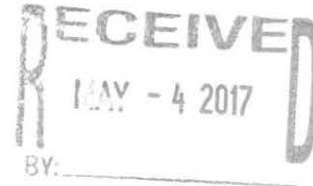
16 I hereby certify that on the 27 day of December, 2016, I served a true and  
17 correct copy of the within and foregoing document on the following persons in the manner set  
forth:

18 B. J. Driscoll [X] United States mail, first class postage prepaid  
19 Attorney at Law [ ] Facsimile transmission.  
20 P. O. Box 50731 [ ] Email  
Idaho Falls, Idaho 83405 [ ] Overnight mail.

21 Cheryl Simmons [X] United States mail, first class postage prepaid  
22 6203 Founders Point Drive [ ] Facsimile transmission.  
Idaho Falls, Idaho 83406 [ ] Email  
[ ] Overnight mail.

23  
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25 Bruce H. Birch  
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Bruce H. Birch, *Pro Se*  
 1465 Third Avenue North  
 P.O. Box 157  
 Payette, ID 83661  
 Telephone (208) 642-9071  
 Facsimile (208) 642-9072



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

IN THE MATTER OF THE ESTATE OF: )

Case No. CV-2011-0007613-IE

RUTH BIRCH,

Deceased.

**AMENDED  
 NOTICE OF APPEAL**

\*\*\*\*\*

TO: (1) Linda Bailey, Personal Representative, and to her attorney of record, B. J. Driscoll, P. O. Box 5073, Idaho Falls, Idaho 83405; and,  
 (2) the Clerk of the above-entitled Court, Penny Manning; and.  
 (3) Linda Bailey, individually and to her attorney of record, B. J. Driscoll, P. O. Box 5073, Idaho Falls, Idaho 83405.

NOTICE IS HEREBY GIVEN:

I. That Bruce H. Birch, Appellant, an interested party in the

AMENDED NOTICE OF APPEAL - I

1 above-captioned action by virtue of the Order Approving Compromise Agreement entered  
2 herein and by virtue of having inherited the estate interest of Barry Lee Birch, appeals to  
3 the District Court of the Seventh Judicial District from the Court's (1) ESTATE CLOSING  
4 ORDER AND DECREE OF DISTRIBUTION which was entered October 12, 2016 and (2)  
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6 SET ASIDE & ORDER DENYING MOTION TO DISQUALIFY which was entered  
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8 RECONSIDERATION AND/OR ORDER TO SET ASIDE and (4) JUDGMENT entered  
9 January 20, 2017.

10 II. That the Appellant has a right to appeal to the District Court of the  
11 Seventh Judicial District the orders described in paragraph I. above as it are appealable  
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13 III. Preliminary statement of the issues which the Appellant intends to  
14 assert on appeal are as follows:

15 A. Judge Mark L. Riddoch erred as a matter of law in denying the  
16 Amended Motion For Reconsideration in that the Court had no authority to rule on that  
17 motion while a Motion To Disqualify was pending before the Court. Judge Riddoch ruled  
18 on the Amended Motion For Reconsideration before ruling on the Motion To Disqualify.

19 B. Judge Mark L. Riddoch erred as a matter of law in denying the  
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21 Amended Motion for Reconsideration the morning of November 29, 2016, prior to entry of  
22 the Order from which appeal is made.

23 C. Judge Mark L. Riddoch erred as a matter of law in denying the  
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1 D. Judge Mark L. Riddoch erred as a matter of law and fact in executing  
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3 SET ASIDE as (1) no document by that title has been filed with the Court and (2) for the  
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5 E. Judge Mark L. Riddoch erred as a matter of law in ordering that legal  
6 fees in the approximate sum of \$10,300.00 be assessed against Bruce H. Birch and/or his  
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8 Birch's one-half interest in the estate and an appropriate reimbursement, if owed, would be  
9 half of that amount, and (2) the Court has no authority to assess or award legal fees against  
10 an heir of the estate based upon the mere request of the Personal Representative.

11 F. Judge Mark L. Riddoch erred as a matter of law in assessing legal  
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13 share of the assets of the Estate as (1) the Court has no authority to assess legal fees against  
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15 Personal Representative did not file a motion for an award of fees in this amount, (3) the  
16 Court did not order payment of fees in this amount and (4) the assessment of these fees  
without notice and an opportunity to object thereto is a violation of due process.

17 G. Judge Mark L. Riddoch erred as a matter of law in assessing legal  
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21 H. Judge Mark Riddoch erred in entering a Judgment against Bruce H.  
22 Birch on January 20, 2017 for attorney fees in the amount of \$4,310.98 as (1) the Judgment  
23 entered without notice and opportunity to oppose the motion of Linda Bailey for entry of  
24 judgment, a denial of due process, and (2) the Judgment for attorney fees does not comply  
25 with the provisions of Rule 54, IRCP as there is no statutory or contractual basis for entry  
26 of a judgment in this amount.

1 I. Acting on his own motion and in violation of Rule 83, IRCP and  
2 Rule 13, IAR, the Hon. Mark Riddoch erroneously entered a Supplemental Order  
3 Regarding Attorney Fees whereby he modified his August 2016 equitable assessment of  
4 legal fees.

5 J. The Appellant is entitled to an award of costs on appeal. If  
6 Appellant should retain counsel during the pendency of this appeal, he seeks an award of  
7 legal fees as well.

8 4. No order has been entered sealing all or any portion of the record.

9 5. A transcript of the hearing held before the Court on June 30, 2016  
10 has been ordered.

11 DATED THIS 3 day of May, 2017.

12  
13   
14 Bruce H. Birch, Pro Se  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4 day of May, 2017, I served a true and correct copy of the within and foregoing document on the following persons in the manner set forth:

B. J. Driscoll  
Attorney at Law  
P. O. Box 50731  
Idaho Falls, Idaho 83405

☒ United States mail, first class postage prepaid  
☐ Facsimile transmission.  
☐ Email  
☐ Overnight mail.

Cheryl Simmons  
6203 Founders Point Drive  
Idaho Falls, Idaho 83406

☒ United States mail, first class postage prepaid  
☐ Facsimile transmission.  
☐ Email  
☐ Overnight mail.

  
Bruce H. Birch

2017 JUL -5 PM 1:15  
DISTRICT COURT  
7TH JUDICIAL DISTRICT  
BONNEVILLE COUNTY ID

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

IN THE MATTER OF THE ESTATE OF:

RUTH BIRCH,

Deceased.

Case No. CV-2011-7613

OPINION AND ORDER ON APPEAL

This Opinion and Order on Appeal is in response to Bruce Birch's appeal from Magistrate Judge Riddoch's assessment of attorney fees against his interest in the estate of Ruth Birch.

**I.  
FACTUAL AND PROCEDURAL BACKGROUND**

On August 01, 2008, Ruth Birch executed her last will and testament naming her children Linda Bailey and Barry Birch as devisees to her estate. Her children Cheryl Simmons and Bruce Birch ("Appellant") were intentionally omitted from the will. On December 04, 2011, Ruth Birch passed away and Linda Bailey was named the personal representative ("PR") for the estate. On September 10, 2012, Magistrate Judge Riddoch ("Judge Riddoch") approved a compromise agreement allowing Cheryl Simmons and Appellant to receive equal shares of their mother's estate. The PR requested that Appellant pay the estate for the legal fees it incurred in preparing the compromise agreement.

Appellant objected to the PR's request for attorney fees and filed a motion to remove

Linda Bailey as PR for the estate, a demand for a bond, a motion to correct the agricultural characterization of the estate's real property, a motion to compel, a motion to allow, and an additional motion for a bond.

By the time the estate was closed, the estate had incurred substantial legal fees and in addition to those fees, sought an assessment against Appellant's interest in the estate in the amount of \$10,314.50 for unnecessary litigation. On August 18, 2016, Judge Riddoch granted the motion stating, "In light of the multiple unsuccessful attempts by Mr. Bruce Birch in his repeated challenges, resulting in significant attorney fees, the Court sustains the PR's proposed distribution, specifically assessing \$10,314.50 in attorney's fees against Mr. Bruce Birch's interest in the estate."<sup>1</sup>

Appellant filed a Motion to Reconsider which was denied. Appellant then filed an Amended Motion to Reconsider, a Motion to Disqualify, and a Second Amended Motion to Reconsider. Those motions were also denied.

On September 01, 2016, the PR filed a Memorandum of Attorney's Fees and Costs under Idaho Rule of Civil Procedure 54(e) claiming fees of \$11,559.05 that had been incurred since April 25, 2016 and not previously approved by Judge Riddoch. Appellant did not object to those fees within fourteen (14) days as required by statute.

On December 20, 2016, Appellant filed a Notice of Appeal and the case was assigned to this Court. On June 01, 2017, this Court heard the oral argument and took the matter under advisement.

## **II. STANDARD OF REVIEW**

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<sup>1</sup> *Order Granting in Substantial Part the Personal Representative's Petition for Orders*, Aug. 18, 2016, p. 5.



“An award of attorney fees and costs is within the discretion of the trial court and subject to an abuse of discretion standard of review. The party disputing the award of attorney fees has the burden of showing an abuse of discretion.<sup>2</sup> Error cannot be presumed on appeal, and an appellant must make an affirmative showing of such error to prevail.<sup>3</sup>

### **III. ANALYSIS**

Appellant appeals Judge Riddoch’s assessment of \$10,314.50 and award of \$11,559.05 in attorney fees and his orders denying Appellant’s motions to reconsider and recuse himself from matter. Appellant also appeals from a judgment requiring him to pay \$4,310.98 to Cheryl Simmons and Linda Bailey. This Court will examine Judge Riddoch’s assessment of \$10,314.50 and award of \$11,559.05 in attorney fees and the judgment of \$4,310.98 entered into against Appellant. Judge Riddoch’s subsequent orders arising out of those assessments will be affirmed or reversed accordingly.

#### **1. Did Judge Riddoch err in ordering that legal fees in the amount of \$10,314.50 be assessed against Appellant’s distributive share of the estate?**

On May 17, 2016, Linda Bailey acting as the PR for the estate petitioned Judge Riddoch for an order of complete settlement and an approval of the final accounting and distribution of the estate. That petition also requested an assessment against Appellant’s interest in the estate in the amount of \$10,314.50. Appellant objected to the PR’s request; however, on August 18, 2016, Judge Riddoch assessed \$10,341.50 against Appellant’s interest in the estate based on his equitable power to assess fees and upon evidence that Appellant engaged in “unnecessary or excessive litigation.”<sup>4</sup> On March 23, 2017, Judge Riddoch entered a Supplemental Order in which he acknowledged that he did have equitable power to assess fees against Appellant’s

<sup>2</sup> *Smith v. Mitton*, 140 Idaho 893, 901, 104 P.3d 367, 375 (2004).

<sup>3</sup> *Carpenter v. R.R. Cattle Co., Inc.*, 108 Idaho 602, 701 P.2d 222 (1985).

<sup>4</sup> *Order Granting in Substantial Part the Personal Representative’s Petition for Orders*, Aug. 18, 2016, p. 5.

interest in the estate, and ordered the fees be assessed pursuant to Idaho Code § 15-3-720.

A. Equity

“Attorney fees are awardable only where they are authorized by statute or contract” and courts “cannot sua sponte grant fees pursuant to a party's general request.”<sup>5</sup> In this case, the compromise agreement signed by the heirs to the estate was silent concerning attorney fees; therefore, no contractual basis existed for the assessment. Therefore the remaining basis for the assessment was statutory, and not equitable. As Judge Riddoch correctly acknowledged in his Supplemental Order, he did not have equitable authority to assess \$10,314.50 against Appellant's interest in the estate. See *Golder v. Golder*, 110 Idaho 57, 61, 714 P.2d 26, 30 (1986) (in an action in equity for relief from a judgment, attorney fees could only be awarded if authorized by statute); see also *Excell Constr., Inc. v. State, Dep't of Labor*, 141 Idaho 688, 696, 116 P.3d 18, 26 (2005) (provision in Idaho Code section 72–708 that the practice and procedure under the worker's compensation law be simple and “as far as possible in accord with the rules of equity” did not authorize the awarding of attorney fees); *Fournier v. Fournier*, 125 Idaho 789, 791, 874 P.2d 600, 602 (Ct.App.1994) (trial court had no authority to award attorney fees to a party on the ground that the court was “[a]cting as a court of equity,” because in Idaho “there is no equitable authority to award attorney fees generally”).<sup>6</sup> Therefore the equitable assessment against Appellant's interest in the estate was error.

B. Idaho Code § 15-3-720.

Judge Riddoch's Supplemental Order attempted to cure his previous Order by assessing the fees pursuant to Idaho Code § 15-3-720 which states: “If any personal representative or person nominated as personal representative defends or prosecutes any proceeding in good faith,

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<sup>5</sup> *Bream v. Benscoter*, 139 Idaho 364, 369, 79 P.3d 723, 728 (2003); *Bingham v. Montane Res. Assocs.*, 133 Idaho 420, 424, 987 P.2d 1035, 1039 (1999).

<sup>6</sup> *Doe v. Shoshone-Bannock Tribes*, 159 Idaho 741, 367 P.3d 136, 143–44 (2016).

whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorney's fees incurred.”<sup>7</sup>

Judge Riddoch incorrectly read Idaho Code § 15-3-720 to assess fees against Appellant for being litigious. Idaho Code § 15-3-720 does not give a personal representative power to assess legal fees against another's interest in the estate, but permits a personal representative acting in good faith to be reimbursed for necessary expenses and disbursements—including attorney fees from the estate. In other words, Idaho Code § 15-3-720 allows the personal representative to be reimbursed for attorney fees incurred while representing the estate. It does not give a personal representative authority to assess fees against another's interest in that estate. A contrary reading would suggest a personal representative could assess fees against another's interest in the estate whether the personal representative prevailed or not. Such a reading is contrary to the American Rule of attorney fees.<sup>8</sup> Therefore, Judge Riddoch erred determining that Idaho Code § 15-3-720 was a basis for assessing fees against Appellant's interest in the estate.

Therefore, it was an abuse of discretion for Judge Riddoch to assess fees against Appellant's interest in the estate under equity and/or Idaho Code § 15-3-720.

**2. Did Judge Riddoch err in assessing legal fees in the sum of \$11,559.05 against Bruce H. Birch and/or his distributive share of the assets of the Estate?**

On September 01, 2016, the PR filed a Memorandum of Attorney Fees and Costs seeking \$11,559.05. Appellant did not file a motion to disallow all or part of those fees, but now argues on appeal that the personal representative was required to first motion up that request for a hearing.

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<sup>7</sup> I.C. § 15-3-720.

<sup>8</sup> *Fournier v. Fournier*, 125 Idaho 789, 791, 874 P.2d 600, 602 (Ct. App. 1994) (“Courts in the United States have long adhered to the “American Rule” of awarding attorney fees.”).

Idaho Rule of Civil Procedure 54 states that “[w]ithin 14 days of service of a memorandum of costs, any party may object by filing and serving a motion to disallow part or all of the costs. . . . Failure to timely object to the items in the memorandum of costs constitutes a waiver of all objections to the costs claimed.”<sup>9</sup>

Appellant did not timely object to the memorandum of costs by filing a motion to disallow all or part of the fees and has thus waived his objection to those costs. Rule 54 does not require, and Appellant cites no authority holding, a memorandum of costs must be noticed up for oral argument. Accordingly, Judge Riddoch’s award of \$11,559.05 is affirmed.

### **3. Did Judge Riddoch err in awarding Linda Jo Bailey \$4,310.98 from Appellant?**

When Judge Riddoch assessed \$10,314.50 and \$11,559.05 against Appellant’s interest in the estate, the sum exceeded Appellant’s distributive share of the estate. As a result, on January 20, 2017, Judge Riddoch entered a judgment requiring Appellant to pay \$4,310.98 to Cheryl Simmons and Linda Bailey of the estate.

Having reversed Judge Riddoch’s previous assessment of \$10,314.50 against Appellant’s interest in the estate, this judgment must also be vacated and the case remanded to the magistrate court for a final determination of Appellant’s interest in the estate consistent with this ruling.

### **4. Related Pending Issues on Appeal**

Having reversed the \$10,314.50 assessment and affirmed the \$11,559.05 award, Appellant’s motions to reconsider and set aside are reversed and/or affirmed accordingly. Based on its rulings, the Court declines to address whether Judge Riddoch had the authority to rule on a Motion for Reconsideration while a Motion to Disqualify was pending or enter the Supplemental Order regarding the \$10,314.50 assessment against Appellant’s interest.

### **5. Attorney Fees on Appeal**

---

<sup>9</sup>I.R.C.P. 54.

Both parties request fees and costs on appeal. Having affirmed in part and reversed in part, attorney fees and costs are awarded to neither party.

**IV.  
CONCLUSION AND ORDER**

For the foregoing reasons, the rulings of the magistrate court are AFFIRMED IN PART AND REVERSED IN PART.

1. Judge Riddoch's assessment of \$10,314.50 against Appellant's interest in the estate is reversed.
2. Judge Riddoch's award of attorney fees in the amount of \$11,559.05 is affirmed.
3. The January 20, 2017 Judgment of \$4,310.98 is vacated.
4. The case is remanded for a final settling of the estate consistent with this order.
5. Neither party is awarded costs and fees on appeal.

**IT IS SO ORDERED.**

Dated this 3<sup>rd</sup> day of July, 2017.



Bruce L. Pickett  
District Judge

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of July, 2017, the foregoing OPINION AND ORDER ON APPEAL was entered and a true and correct copy was served upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be delivered to their courthouse boxes.

#### **Attorney for Appellant**

Bruce Birch  
1465 Third Ave. North  
P.O. Box 157  
Payette, ID 83661

#### **Attorney for Respondent**

B.J. Driscoll  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, Idaho 83405

Penny Manning  
Clerk of the District Court  
Bonneville County, Idaho

by A. Barnes  
Deputy Clerk

1 Michael D. Moscrip  
2 Attorney at Law  
3 P.O. Box 157  
4 Payette, ID 83661  
5 ISB #10438  
6 Telephone (208) 642-9071  
7 Facsimile (208) 642-9072

2017 AUG 14 PM 2:29

DISTRICT COURT  
MAGISTRATE DIVISION  
BONNEVILLE COUNTY  
IDAHO



ORIG

9 IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
10 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

12 IN THE MATTER OF THE ESTATE OF: )

Case No. CV-2011-0007613-IE

14 RUTH BIRCH,

15 Deceased.

NOTICE OF APPEAL

16 \*\*\*\*\*

17 TO: The Linda Bailey, Personal Representative, and to her attorney of record, B. J.  
18 Driscoll, P. O. Box 5073, Idaho Falls, Idaho 83405, and the Clerk of the above-  
19 entitled Court, Penny Manning.

20 NOTICE IS HEREBY GIVEN:

21 I. That Bruce H. Birch, Appellant, an interested party in the  
22 above-captioned action by virtue of the Order Approving Compromise Agreement entered  
23 herein and by virtue of having inherited the estate interest of Barry Lee Birch, appeals to  
24 the Supreme Court of the State of Idaho from the OPINION AND ORDER ON APPEAL  
25 entered herein on July 5, 2017.

27 NOTICE OF APPEAL - 1  
28






**CERTIFICATE OF SERVICE**

I hereby certify that on the 11 day of August, 2017, I served a true and correct copy of the within and foregoing document on the following persons in the manner set forth:

B. J. Driscoll	<input checked="" type="checkbox"/>	United States mail, first class postage prepaid
Attorney at Law	<input type="checkbox"/>	Facsimile transmission.
P. O. Box 50731	<input type="checkbox"/>	Email
Idaho Falls, Idaho 83405	<input type="checkbox"/>	Overnight mail.

Cheryl Simmons	<input checked="" type="checkbox"/>	United States mail, first class postage prepaid
6203 Founders Point Drive	<input type="checkbox"/>	Facsimile transmission.
Idaho Falls, Idaho 83406	<input type="checkbox"/>	Email
	<input type="checkbox"/>	Overnight mail.

  
Legal Assistant to Mr. Moscrip

1 Mary Fox, CSR  
2 Seventh Judicial District  
3 Bonneville County Courthouse  
4 605 N Capital Ave  
5 Idaho Falls, Idaho 83402  
6 (208) 529-1350 Ext. 1194  
7 E-Mail: mfox@co.bonneville.id.us

8 NOTICE OF TRANSCRIPT LODGED

9 DATE: 11/20/2017

10 TO: Kimber Grove, Clerk of the Court  
11 Supreme Court / Court of Appeals  
12 P.O. Box 83720  
13 Boise, ID 83720-0101

14 SUPREME COURT DOCKET NO: 45451

15 DISTRICT COURT CASE NO: CV-2011-7613

16 CAPTION OF CASE:

17 LINDA BAILEY V BRUCE H BIRCH

18 You are hereby notified that a reporter's appellate  
19 transcript in the above-entitled and numbered case has  
20 been lodged with the District Court Clerk of the County  
21 of Bonneville in the Seventh Judicial District. Said  
22 transcript consists of the following proceedings,  
23 totaling 44 pages:

24 1. Appeal from magistrate court, June 1, 2017

25 Respectfully,

\_\_\_\_\_  
Mary Fox

Mary Fox, CSR 1008, RPR

cc: District Court Clerk

IN THE MATTER OF THE ESTATE OF:  
RUTH BIRCH, DECEASED.

**Real Party in Interest – Appellant.**

42

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

IN THE MATTER OF THE ESTATE OF: )  
RUTH BIRCH, DECEASED. )

\_\_\_\_\_) )  
LINDA BAILEY, Personal Representative, )

Petitioner- Respondent, )

v. )

BRUCE H. BIRCH, )

\_\_\_\_\_) )  
Real Party in Interest – Appellant. )

Case No. CV-2011-7613

Docket No. 45451

**CLERK'S CERTIFICATION  
OF EXHIBITS**

STATE OF IDAHO )

County of Bonneville )

I, Penny Manning, Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, do hereby certify that the foregoing Exhibits were marked for identification and offered in evidence, admitted, and used and considered by the Court in its determination:

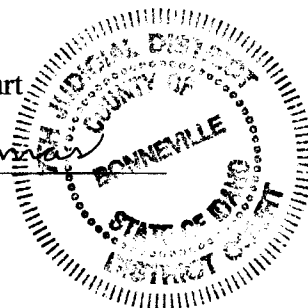
N/A

And I further certify that all of said Exhibits are on file in my office and are part of this record on Appeal in this cause, and are hereby transmitted to the Supreme Court.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District Court this 4<sup>th</sup> day of January, 2018.

PENNY MANNING  
Clerk of the District Court

By: Jane D. Shonka  
Deputy Clerk



**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE**

IN THE MATTER OF THE ESTATE OF:  
RUTH BIRCH, DECEASED.

\_\_\_\_\_  
LINDA BAILEY, Personal Representative,

Petitioner- Respondent,

v.

BRUCE H. BIRCH,

\_\_\_\_\_  
Real Party in Interest – Appellant.

)  
)  
) Case No. CV-2011-7613  
)  
)

) Docket No. 45451  
)  
)

) **CERTIFICATE OF SERVICE**  
)  
)  
)  
)  
)  
)  
)  
)

I HEREBY CERTIFY that on the 4<sup>th</sup> day of January, 2018, I served a copy of the Reporter's Transcript (if requested) and the Clerk's Record in the Appeal to the Supreme Court in the above entitled cause upon the following attorneys:

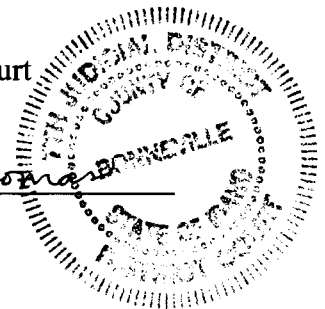
Michael D. Moscrip  
PO Box 157  
Payette, ID 83661

B.J. Driscoll  
PO Box 50731  
Idaho Falls, ID 83405

by depositing a copy of each thereof in the United States mail, postage prepaid, in an envelope addressed to said attorneys at the foregoing address, which is the last address of said attorneys known to me.

PENNY MANNING  
Clerk of the District Court

By: *Sina D. Thomas*  
Deputy Clerk



B. J. Driscoll, Esq. – ISBN 7010  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
Telephone: (208) 524-0731  
Facsimile: (208) 529-4166

BONNEVILLE COUNTY  
IDAHO FALLS, IDAHO

2018 FEB -1 PM 4: 50

Attorneys for the Estate and Its Personal Representative

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF BONNEVILLE

In the Matter of the Estate of

RUTH BIRCH,

Deceased.

Case No. CV-2011-7613

**OBJECTION TO CLERK'S RECORD AND  
MOTION TO STRIKE**

COMES NOW the Respondent Linda Jo Bailey ("Respondent") in her capacity as personal representative of the Estate of Ruth Birch ("Estate"), by and through her counsel of record, and objects to the Clerk's Record because it contains documents beyond those listed in Idaho Appellate Rule 28(b)(1) and that were not requested by the Appellant Bruce Birch ("Appellant") in his Notice of Appeal dated August 11, 2017 ("Notice of Appeal").

Idaho Appellate Rule 17 sets forth the required contents for a notice of appeal. Rule 17(i) states that the notice of appeal must include "[a] designation of documents, if any, to be included in the clerk's or agency's record in addition to those automatically included pursuant to the following Rule 28." Similarly, Idaho Appellate Rule 28(c) states, "The clerk's or agency's record shall also include all additional documents requested by any party *in the notice of appeal...*"

**OBJECTION TO CLERK'S RECORD AND MOTION TO STRIKE - PAGE 1**

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(Emphasis added.) In his Notice of Appeal, Appellant does not designate any documents to be included in the clerk's record other than those automatically included under Rule 28.


If no additional documents are requested in the notice of appeal, Idaho Appellate Rule 28(b)(1) sets forth the list of the only documents to be automatically included in the clerk's record in a civil case as follows:

- A. Register of actions.
- B. Any order sealing all or any portion of the record.
- C. The original and any amended complaint or petition.
- D. The original and any amended answer or response to the complaint or petition.
- E. The original and any amended counterclaim, third party claim, or cross-claim.
- F. The original and any amended answer or response to a counterclaim.
- G. The jury verdict rendered in a jury trial.
- H. The findings of fact and conclusions of law and any memorandum decision entered by the court.
- I. All judgments and decrees.
- J. A list of all exhibits offered, whether or not admitted.
- K. Notice of appeal and cross-appeal.
- L. Any request for additional reporter's transcript or clerk's record.
- M. A court reporter's notice of lodging with the district court.
- N. Table of contents and index, which shall be placed at the beginning of each volume of the record.

Because the Appellant did not request any additional documents to be included in the clerk's record, only the foregoing list of documents should be included. However, despite these rules and the absence of any request for additional documents in the Appellant's Notice of Appeal, the Clerk's Record contains many additional documents that should not be included. Respondent objects to the inclusion of these unrequested additional records and moves to strike all of them from the Clerk's Record. A few examples of such additional documents include the Motion to Consider (R.11), Memorandum in Support of Motion to Reconsider (R.13), Memorandum of Attorney's Fees and Costs (R.21), Affidavit of B. J. Driscoll (R.24), Supplemental

Memorandum (R.36), Brief in Opposition to Motion to Reconsider (R.38), Reply Memo (R.42), Amended Motion to Reconsider or Alternatively, Motion to Set Aside Pursuant to Rule Rule [sic] 60(b), IRCP (R.63), Second Amended Motion to Reconsider (R.74), Appellate Brief (R.95), and so on. Appellant objects and moves to strike all documents in the Clerk's Record not identified in Rule 28(b)(1).

DATED this 7 day of February, 2018.

  
\_\_\_\_\_  
B. J. Driscoll, Esq.  
Attorneys for the Respondent



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 1 day of February, 2018, I caused a true and correct copy of the foregoing **OBJECTION TO CLERK'S RECORD AND MOTION TO STRIKE** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Michael D. Moscrip  
Attorney at Law  
P.O. Box 157  
Payette, ID 83661  
Fax: (208) 642-9072

☒ U. S. Mail  
☐ Fax  
☐ Overnight Delivery  
☐ Hand Delivery

  
B. J. Driscoll

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

IN THE MATTER OF THE ESTATE OF:  
RUTH BIRCH, DECEASED.

-----  
LINDA BAILEY, Personal Representative,

Petitioner-Respondent,

v.

BRUCE H. BIRCH,

-----  
Real Party in Interest-Appellant.

Case No. CV-2011-7613

Docket No. 45451

CLERK'S CERTIFICATE OF  
APPEAL

Appeal from: Seventh Judicial District, Bonneville County

Honorable Bruce L. Pickett, District Judge, presiding.

Case number from Court:

CV-2011-7613

Order or Judgment appealed from:

Opinion and Order on Appeal dated July 5, 2017

Attorney for Appellant:

Michael D. Moscrip

Attorney for Respondent:

B.J. Driscoll

Appealed by:

Bruce H. Birch

Appealed against:

Linda Bailey

Notice of Appeal Filed:

August 14, 2017

Appellate Fee Paid:

Yes

Was District Court Reporter's Transcript requested?

Yes

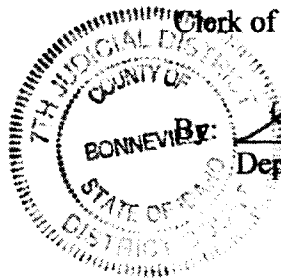
If so, name of reporter:

Mary Fox

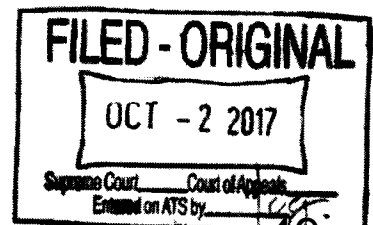
Dated: September 26, 2017

PENNY MANNING

Clerk of the District Court



Deputy Clerk



B. J. Driscoll, Esq. – ISBN 7010  
SMITH, DRISCOLL & ASSOCIATES, PLLC  
414 Shoup Ave.  
P.O. Box 50731  
Idaho Falls, Idaho 83405  
Telephone: (208) 524-0731  
Facsimile: (208) 529-4166

2018 MAR 19 PM 4:27  
DISTRICT COURT  
7TH JUDICIAL DISTRICT  
BONNEVILLE COUNTY ID

Attorneys for the Estate and Its Personal Representative

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF BONNEVILLE

In the Matter of the Estate of

RUTH BIRCH,

Deceased.

Case No. CV-2011-7613

**ORDER ON OBJECTION TO CLERK'S RECORD  
AND MOTION TO STRIKE**

THIS MATTER having come on regularly for hearing before the Honorable Bruce Pickett, District Judge, on March 1, 2018, upon Respondent Linda Bailey's Objection to Clerk's Record and Motion to Strike, with Linda Bailey appearing by and through B. J. Driscoll, Esq., of the firm Smith, Driscoll & Associates, PLLC; and Appellant Bruce H. Birch, appearing by and through Michael Moscrip, Esq., of Birch Law Office, PLLC; the Court having reviewed its files, considered oral arguments from counsel, and otherwise being fully advised on the premises, and for those reasons provided on the record at the above-referenced hearing;

IT IS HEREBY ORDERED that Respondent's Objection to Clerk's Record is SUSTAINED and the Motion to Strike is GRANTED in that all documents not specifically identified in Idaho

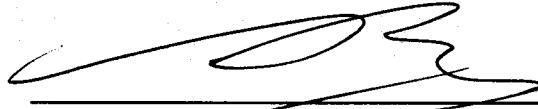
**ORDER ON OBJECTION TO CLERK'S RECORD AND MOTION TO STRIKE - PAGE 1**

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MAR 01 2018  
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Appellate Rule 28(b)(1) be deleted from the clerk's record, including the Amended Notice of Appeal filed February 8, 2018, at which time the clerk's record will be deemed settled.

MADE AND ENTERED this 18 day of March, 2018.

  
Hon. Bruce Pickett  
District Judge

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19 day of March, 2018, I caused a true and correct copy of the foregoing **ORDER ON OBJECTION TO CLERK'S RECORD AND MOTION TO STRIKE** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

Persons Served:

B. J. Driscoll, Esq.  
Smith, Driscoll & Associates, PLLC  
P. O. Box 50731  
Idaho Falls, ID 83405-0731

☒ Hand ☒ Mail ☐ Fax

Michael Moscrip, Esq.  
Birch Law Office, PLLC  
1465 3<sup>rd</sup> Ave. North  
P. O. Box 157  
Payette, ID 83661

☐ Hand ☒ Mail ☐ Fax



CLERK OF THE COURT

By:   
Deputy Clerk

**ORDER ON OBJECTION TO CLERK'S RECORD AND MOTION TO STRIKE - PAGE 2**

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